

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Part 5 of the Commission's Rules)
to Require Electronic Filing of Applications for)
Experimental Radio Licenses and Authorizations)

ORDER

Adopted: August 15, 2003

Released: August 20, 2003

By the Commission:

1. By this Order, we are adopting certain non-substantive revisions to Part 5 of the Commission's Rules,¹ which applies to Experimental Radio licensing. The primary revision will require that, henceforth, all applications for licenses for Experimental Radio stations be filed electronically. In addition, we are codifying the existing requirement that any objections to Experimental Radio license applications must comply with the provisions of Part 1 of the Rules governing informal objections.²

2. *Electronic Filing.* Since November 18, 1998, the application forms applicable to licenses for Experimental Radio stations could be submitted to the Commission electronically. These forms are:

- a. FCC Form 405, Application for Renewal of Experimental License or STA.
- b. FCC Form 442, Application for New or Modified Experimental Radio Station Authorization.
- c. FCC Form 702, Application for Consent to Assignment of Radio Station Construction Authorization or License (For Stations in Services Other Than Broadcast).
- d. FCC Form 703, Application for Consent to Transfer Control of Corporation Holding Station License.
- e. Special Temporary Authority (STA), Application for STA.
- f. Add Attachments, Form for Submitting Additional Exhibits to an Existing Experimental Licensing Application.
- g. Submit Correspondence, Form for Replying to Correspondence Sent by the OET ELS Branch Pertaining to a Pending Application.
- h. Amend/Complete Application, Form for Amending or Completing a Page on a Previously-Filed Experimental Radio Licensing Application.

¹ Sections 5.1-5.125 of the Commission's Rules, 47 C.F.R. §§ 5.1-5.125.

² See Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41 (informal requests for Commission action); see also Sections 1.42-1.52 of the Rules, 47 C.F.R. §§ 1.42-1.52 (other requirements for pleadings).

3. These forms have been accessible at the official web site of the Commission's Office of Engineering and Technology, <https://gulfoss2.fcc.gov/prod/oet/cf/els/index.cfm>.³ Of the 769 total Experimental Radio license application filings in calendar year 2002, 88% were filed electronically. In the Quarter ending March 31, 2003, 215 filings were submitted, and 93% of these were made electronically. By requiring that applications for Experimental Radio licenses henceforth be filed electronically,⁴ we are taking another step toward the Commission's compliance with Section 1704 of the Government Paperwork Elimination Act.⁵ We do, however, recognize that the mandatory electronic filing requirement could impose unusual burdens on some filers and that, therefore, it may be appropriate for us to consider granting limited waivers of this requirement. Such waivers, however, will not be routinely granted and the filing party must plead with particularity the facts and circumstances warranting relief.⁶

4. Mandatory electronic filing of applications for Experimental Radio licenses will commence on January 1, 2004. This change is reflected in the amendments to Part 5 of the Commission's Rules, 47 C.F.R. §§ 5.1-5.125, which are set forth in the Appendix attached to this Order. Because this change from voluntary to mandatory electronic filing is merely procedural in nature and does not substantively change the information required to be filed with the Commission, the notice and comment requirements of the Administrative Procedure Act are inapplicable.⁷ Paper versions of these forms will not be accepted

³ Internet access to this Web Site requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later.

⁴ The Commission requires mandatory electronic filing for various services. See, e.g., *Space Station Licensing Rules and Policies*, IB Docket No. 02-34, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-102, released May 19, 2003, at ¶ 247; *Wireline Competition Bureau Initiates Electronic Filing of Automated Reporting Management Information System (ARMIS) Data and Associated Documents by Incumbent Local Exchange Carriers*, Public Notice, 18 FCC Rcd 3245 (Wireline Comp. Bur., 2003); *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing*, CS Docket No. 00-78, *Report and Order*, FCC 03-55, released March 19, 2003; *Wireless Telecommunications Bureau (WTB) Extends Mandatory Electronic Filing Date*, Public Notice, 15 FCC Rcd 15692 (WTB, 2000); *1998 Biennial Review – Streamlining of Mass Media Applications, Rules and Processes*, MM Docket No. 98-43, 13 FCC Rcd 23056, 23060 ¶ 8 (1998); and *Electronic Tariff Filing System (ETFS)*, Order, 13 FCC Rcd 12335 (Com. Car. Bur., 1998).

⁵ Pub. L. No. 105-277, Div. C, Title XVII, 112 Stat. 2681-749 (1998), codified at 44 U.S.C. § 3504.

⁶ Users can also access from the web site specified above an "Experimental License Information Pack" that links to extensive sources of information about Experimental Licenses and forms. Special attention should be given to the details of the applicant account registration function, form filing function, and the fee form handling procedures, if a fee is required (see link to Form 159 and the associated Public Notice). Failure to follow the necessary details and procedures may result in an application being dismissed, returned, or not considered as officially filed.

⁷ See Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(A); *JEM Broadcasting Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (in affirming that the FM "hard look" processing rules are procedural in nature and exempt from the general notice and comment requirements of the APA, the court explained that "the 'critical feature' of the procedural exception 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'"). Moreover, we anticipate that the new electronic filing procedural requirement will not be heavily burdensome, given that 93% of Experimental Radio license applications are currently filed electronically on a voluntary basis, that applications which are returned for non-compliance with the new e-filing requirement may be resubmitted electronically, and that we will accept those applications which are not filed electronically but are accompanied with an adequate showing of good cause for waiver of the e-filing requirement.

for filing after December 31, 2003, unless accompanied by an appropriate request for waiver of the electronic filing requirement.

5. For technical assistance using the system or to report problems, please contact Doug Young, staff engineer, Experimental Licensing Branch, at (202) 418-2440, douglas.young@fcc.gov, or call the main telephone number for the Branch, (202) 418-2432. To request additional information concerning Experimental Radio Licensing, please contact the Branch Chief, Jim Burtle, at (202) 418-2445, james.burtle@fcc.gov.

6. *Informal Objections.* Applications for Experimental Radio licenses are not subject to the public notice requirements of Section 309(b) of the Communications Act, of 1934, as amended,⁸ and, therefore, the proper procedure for opposing such applications is to file an informal objection.⁹ However, there is no provision in Part 5 of the Rules that expressly addresses this point. To codify this requirement, we are adding new Section 5.95, which will provide for the filing of informal objections that comply with the requirements set forth in Sections 1.41-1.52 of the Rules.¹⁰ We continue to prefer the use of informal procedures in the context of Part 5, which “contemplate[s] that experimental licensees will cooperate in good faith with [regular] service licensees to prevent harmful interference to the affected services, to investigate any complaints of interference, and to take appropriate measures to mitigate interference” and require that “in the event of unmitigable harmful interference, experimental operations must cease immediately.”¹¹ Because this amendment merely clarifies an existing procedure and makes no substantive changes to the Commission’s rules, it also is exempt from the notice and comment requirements of the Administrative Procedure Act.¹²

PROCEDURAL MATTERS

11. *FCC Notice Required By The Paperwork Reduction Act.* Under 5 C.F.R. Section 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. The OMB Control Numbers for this collection are 3060-0053, 3060-0065, 3060-0068, 3060-0758, 3060-0771, 3060-0093, and 3060-0589. This Notice is required by the Paperwork Reduction Act of 1995, Public Law 104-13, October 1, 1995, 44 U.S.C. Section 3507.

⁸ 47 U.S.C. § 309(b).

⁹ Whenever pleadings captioned as “petitions to deny” Experimental Radio license applications have been filed, they have consistently been treated as informal objections. *See, e.g., Letter from Charles Iseman, Deputy Chief, Electromagnetic Compatibility Division (EMCD) to J. C. Rozendaal, Esq., et al., re: MDS America, Inc. (WC2XPU)*, dated January 8, 2003, *review pending on other grounds*; *Letter from Charles Iseman, Deputy Chief, EMCD to James A. Stenger, Esq., et al., re: Navini Networks, Inc. (WB2XJK)*, dated June 21, 2002; *Maritime Telecommunications Network, Inc. (MTN), Station KI2XEE*, 16 FCC Rcd 11993 (OET, 2001).

¹⁰ 47 C.F.R. §§ 1.41-1.52.

¹¹ *Diversified Communications Engineering, Inc., WA2XMY*, 15 FCC Rcd 2547, 2551 (2000), *citing* Section 5.111(a)(2) of the Commission’s Rules, 47 C.F.R. § 5.111(a)(2) (“If harmful interference to an established radio service develops, the [experimental] licensee shall cease transmissions. . .”). *See generally, In the Matter of Amendment of Part 5 of the Commission’s Rules to Revise the Experimental Radio Service Regulations*, ET Docket No. 96-256, *Report and Order*, 13 FCC Rcd 21,391 (1998).

¹² *See* note 7, *supra*.

ORDERING CLAUSE

12. IT IS ORDERED that, pursuant to Sections 4, 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 302, and 303, this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 5 as follows:

PART 5 – EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

The authority citation for Part 5 continues to read as follows:

Authority: Secs. 4, 302, 303, 48 Stat. 1068, 1082, as amended; 47 U.S.C. 154, 302, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

1. Section 5.55 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.55 Filing of Applications.

(a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the Experimental Radio Service are discussed in § 5.59 of this part, and may be accessed electronically at the Office of Engineering and Technology Web site <https://gulfoss2.fcc.gov/prod/oet/cf/els/index.cfm>. If no standard form is applicable, the informal application procedure outlined in § 5.59(f) of this part should be followed.

(b) Any application for radio station authorization shall be submitted electronically through the Office of Engineering and Technology Web site <https://gulfoss2.fcc.gov/prod/oet/cf/els/index.cfm> effective January 1, 2004. Any correspondence relating thereto that cannot be submitted electronically shall instead be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554. (Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.)

* * * * *

2. Section 5.61 is amended by revising the introductory text paragraph (c) to read as follows:

§ 5.61 Procedure for Obtaining a Special Temporary Authorization.

* * * * *

(c) An application for special temporary authorization shall be filed electronically through the Office of Engineering and Technology Web site <https://gulfoss2.fcc.gov/prod/oet/cf/els/index.cfm> effective January 1, 2004 and shall contain the following information:

* * * * *

3. New Section 5.95 is added and reads as follows:

§ 5.95 Informal Objections. A person or entity desiring to object to or to oppose an Experimental Radio application for a station license or authorization may file an informal objection against that application. The informal objection and any responsive pleadings shall comply with the requirements set forth in Sections 1.41-1.52 of this chapter.